BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against:	)	
ROMAN BORIS CHAM, M.D.	)	**Case No. 800-2016-028037**
Physician's and Surgeon's Certificate No. A37068	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 2, 2019

IT IS SO ORDERED September 25, 2019

MEDICAL BOARD OF CALIFORNIA

Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
KAROLYN M. WESTFALL
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against: **ROMAN BORIS CHAM, M.D.** **7339 El Cajon Blvd., Ste. B** **La Mesa, CA 91942** **Physician's and Surgeon's Certificate No. A 37068** Respondent.	Case No. 800-2016-028037 OAH No. 2018090487 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Karolyn M. Westfall, Deputy Attorney General.

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2. Roman Boris Cham, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Frank, Esq., whose address is: Neil, Dymott, Frank, McFall & Trexler, McCabe & Hudson, APLC, 110 West A Street, Suite 1200, San Diego, CA 92101.

3. On or about July 17, 1981, the Board issued Physician's and Surgeon's Certificate No. A 37068 to Roman Boris Cham, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2016-028037 and will expire on September 30, 2020, unless renewed.

JURISDICTION

4. On June 18, 2019, Second Amended Accusation No. 800-2016-028037, which superseded the First Amended Accusation filed on February 19, 2019, was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on June 18, 2019. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation. A copy of Second Amended Accusation No. 800-2016-028037 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 800-2016-028037. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Second Amended Accusation No. 800-2016-028037, agrees that cause exists for discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. A 37068 for the Board's formal acceptance.

9. Respondent further agrees that if an accusation is filed against him before the Board, or in any other proceeding before the Board, all of the charges and allegations contained in Accusation No. 800-2016-028037 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

10. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A 37068 without further notice to, or opportunity to be heard by, Respondent.

11. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Board, considers and acts upon it.

12. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full

force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 37068, issued to Respondent, Roman Boris Cham, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Second Amended Accusation No. 800-2016-028037 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Second Amended Accusation, No. 800-2016-028037 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney, Robert Frank, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9-4-19

ROMAN BORIS CHAM, M.D.
Respondent

I have read and fully discussed with Respondent Roman Boris Cham, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 9-4-19

ROBERT W. FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 9/5/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 800-2016-028037

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against: **ROMAN BORIS CHAM, M.D.** **7339 El Cajon Blvd., Ste. B** **La Mesa, CA 91942** **Physician's and Surgeon's Certificate No. A 37068,** Respondent.	Case No. 800-2016-028037 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 17, 1981, the Medical Board issued Physician's and Surgeon's Certificate No. A 37068 to Roman Boris Cham, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2020, unless renewed.

JURISDICTION

3. This Second Amended Accusation, which supersedes the First Amended Accusation filed on February 19, 2019, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code)unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"..."

5. Section 2234 of the Code states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"..."

6. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent has subjected his Physician's and Surgeon's Certificate No. A 37068 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patients A,[1] B, and C, as more particularly alleged hereinafter:

PATIENT A

8. On or about December 18, 2015, Patient A, an incarcerated 68-year old male patient with a history of insulin-dependent diabetes and hypertension, presented to Alvarado Hospital emergency room with a chronic infected wound to his left second toe. Upon admission to the hospital, Patient A was diagnosed with chronic osteomyelitis of the left second toe and referred to Respondent for an orthopedic consultation.

[1] To protect the privacy of all patients involved, patient names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

9. On or about December 19, 2015, Respondent met with Patient A. After a physical examination, Respondent noted the patient's infected left second toe, as well as his severely deformed adjacent left third toe. Respondent documented his physical findings as, "very swollen left second toe, obvious of chronic infection and necrotic ulcer on the plantar aspect at the tip. The entire toe is swollen. Circulation appears to be intact." Respondent recommended an amputation of the patient's left second toe only, despite the patient expressing concerns regarding his left third toe as well. Patient A agreed to the surgery, which was scheduled for December 22, 2015. The medical record for this date includes no physical examination findings of the patient's adjacent left third toe, or any discussion with the patient regarding the patient's complaints or concerns about his left third toe.

10. On or about December 22, 2015, Patient A provided a full informed consent for the amputation of the left second toe only, and was placed under general anesthesia. The patient's lower left limb was prepped and draped in usual sterile fashion. A standard time-out procedure was performed, confirming the appropriate side and site of the surgery. Shortly after the surgery began, Respondent inadvertently removed the patient's left third toe. Upon realization of the error, Respondent then removed the patient's left second toe, and then completed the surgical procedure.

PATIENT B

11. On or about February 9, 2000, Patient B, a then 47-year old female patient with a history of a prior severe motor vehicle accident that resulted in multiple injuries including a broken pelvis, femur, shattered ankle, broken foot, and multiple rib fractures, presented to Respondent with complaints of hip pain. X-rays conducted in the office that day revealed a well-healed mid-shaft femur fracture and negligible degenerative joint disease of the hip joint. Respondent diagnosed the patient with recurrent, chronic trochanteric bursitis, tendinitis of the left hip, secondary to painful hardware that included a retained interlock nail in the left femur. The patient declined any interventions at that time.

12. On or about May 6, 2013, Patient B presented to Respondent with complaints of chronic and worsening left hip pain. X-rays of Patient B's hip revealed bone-on-bone.

Respondent diagnosed the patient with degenerative joint disease of the left hip, and recommended a difficult total hip replacement with removal of the retained interlock nail.

13. On or about October 26, 2013, an MRI of Patient B's pelvis revealed previous bilateral open reduction and internal fixation of both femurs, severe osteoarthritis of the left hip with mild joint effusion, and adjacent mild soft tissue edema.

14. On or about November 13, 2013, Patient B presented to Respondent with continued complaints of left hip pain and requested a total hip replacement. X-rays conducted in the office that day revealed bone-on-bone and a well-healed femur from her previous trauma with retained Russell-Taylor locked nail.

15. On or about December 19, 2013, Respondent performed a removal of the Russell-Taylor nail and a left total hip replacement on Patient B, using the Wright Medical Conserve hip, Press-Fit 48-mm cup with 40-mm ceramic head, and short neck with +3.5 collar. Respondent had never previously utilized a ceramic-on-metal implant, which was not FDA-approved at the time, and he did not investigate or research its use prior to the surgery. During the surgery, Respondent had to accept a higher than usual theta angle to marry the cup to the patient's anatomy as closely as possible. Intraoperative x-rays showed acetabular and preliminary femoral components in place.

16. Sometime after the surgery, Patient B began to experience a clicking sensation from her hip as well as increasing pain.

17. On or about July 30, 2014, Patient B presented to Dr. L.L., with complaints of a clicking sensation from her hip. Upon review of the x-rays from Respondent's office, Dr. L.L. determined that an excessive theta angle was resulting in edge-loading that was causing wear on the metal-ceramic interface. Dr. L.L. recommended the patient be watched carefully with x-rays every six months, and advised her that she would need a left total hip revision at some point in the future.

18. On or about January 29, 2015, x-rays conducted on Patient B's left hip revealed a total left hip arthroplasty with vertical position of the acetabular component suggestive of failure.

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19. On or about February 23, 2015, Patient B presented to Dr. A.K., with complaints of severe pain in her left hip. After reviewing imaging and blood tests, Dr. A.K. determined that the patient had elevated levels of cobalt and chromium, which she suspected to be coming from the metals in the patient's left hip. Dr. A.K. diagnosed Patient B with failed hip with vertical and anteverted acetabular component, likely loosening of the acetabular component, likely ceramic head on metal wear resulting in metallosis and elevated metal ions.

20. On or about March 17, 2015, Dr. A.K. performed a revision left total hip arthroplasty, saucerization and removal of acetabular metallosis, and removal of a subcutaneous soft tissue mass on Patient B.

PATIENT C

21. On or about November 18, 2013, Patient C, a then 62-year old female patient with a history of a prior right total knee replacement, presented to Respondent with complaints of left hip pain that had been unresponsive to conservative treatment. X-rays of the patient's left hip revealed bone-on-bone. Respondent diagnosed the patient with advanced degenerative joint disease of the left hip and recommended a hip replacement.

22. On or about October 8, 2014, Respondent performed a left total hip replacement on Patient C, using the Microport Hip System, with a 13 mm Press-Fit femur, 50 mm Dynasty Press-Fit cup with additional two screws to the cup, short varus neck, and 32 mm ceramic head. Intraoperative x-rays showed the femoral head component was not in place.

23. On or about October 10, 2014, Patient C was discharged from the hospital to a skilled nursing facility for rehabilitation.

24. On or about October 17, 2014, Respondent received a call from the skilled nursing facility, indicating that Patient C's hip had been "clicking" and she had been experiencing pain while walking. X-rays taken at the skilled nursing facility that day revealed the prosthesis to be in satisfactory anatomic position.

25. On or about October 20, 2014, Patient C presented to Respondent for an unscheduled visit, due to complaints of a popping sound coming from her hip. Respondent was able to hear noise from the hip with range of motion, which he hoped would subside with more healing.

26. On or about November 6, 2014, Patient C presented to Respondent with complaints of pain intermittently going from her knee down to her foot. Respondent reviewed x-rays taken in his office that day and was satisfied that her hip looked "fine."

27. On or about December 15, 2014, Patient C presented to Respondent with complaints of tenderness over the greater trochanter area, and an intermittent snapping sound in her hip. Respondent was able to hear the snapping sound while the patient was walking, which he believed to suggest a snapping hip problem. Respondent reviewed x-rays taken in his office that day, was satisfied that her hip looked "fine," and referred Patient C to physical therapy.

28. On or about March 2, 2015, Patient C presented to W.E., M.D. (Dr. W.E.) for an orthopaedic evaluation with complaints of continuous pain in her left hip since her surgery. On physical examination, Patient C had a very limited range of motion and a palpable "clunk" with any hip flexion. X-rays performed that day revealed an excessive amount of anteversion of the total hip arthroplasty acetabular component, and superior migration of the femoral head. Dr. W.E. referred Patient C to L.R., M.D. (Dr. L.R.) for a revision total hip arthroplasty consultation.

29. On or about April 16, 2015, Patient C presented to Dr. L.R. for consultation. X-rays taken that day revealed the acetabular shell to be excessively anteverted, and Dr. L.R. recommended a revision total hip arthroplasty.

30. On or about August 3, 2015, Dr. L.R. performed a revision left total hip arthroplasty on Patient C. During the surgery, evaluation revealed the patient to have a malpositioned acetabulum, which was found to be in approximately eighty (80) degrees of anteversion, and sitting with vertical positioning.

31. Respondent committed repeated negligent acts in his care and treatment of Patients A, B, and C, which included but was not limited to, the following:

(a) Failing to document any physical examination findings of Patient A's adjacent left third toe, or any discussion with the patient regarding the patient's complaints or concerns about his left third toe;

(b) Inadvertently amputating Patient A's left third toe;

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(c) Utilizing a ceramic-on-metal implant construct on Patient B that was not FDA-approved, that was new to him, and which he had not investigated or researched significantly prior to his use;

(d) Placing the acetabular cup on Patient B well outside the reasonable range for acetabular positioning, leading to metallosis and postoperative symptoms; and

(e) Placing the acetabular shell on Patient C in excessive anteversion, causing it to make abnormal noise and pain during movement.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

32. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 37068 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 7 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 37068, issued to Respondent, Roman Boris Cham, M.D.;

2. Revoking, suspending or denying approval of Respondent, Roman Boris Cham, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent, Roman Boris Cham, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: June 18, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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